CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 29

Heard at Montreal, Monday, March 21st, 1966

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Trains 913 and 914 are being operated between Montreal and Sherbrooke by assigned freight crews. The Brotherhood alleges that in operating these trains in such manner, the Company is violating the provisions of article 14 (a) of the collective agreement.

JOINT STATEMENT OF ISSUE:

On November 24th, 1926, the Company on the one hand, along with the Brotherhood of Railroad Trainmen and Order of Railway Conductors on the other hand, entered into the following agreement:

> In consideration of a request from the Canadian Pacific Railway represented by Mr. Savage, General Superintendent, that in order to increase business between Montreal and Sherbrooke, that two freight crews be assigned to this service therefore:
>
> It is hereby agreed that on account of existing arrangements in effect between the above named parties, relative to freight runs between Montreal and Newport and Farnham and Megantic, that two crews be assigned by bid to this service, crews to be paid schedule wayfreight rates each day, and
>
> It is further agreed that this train will run single in each direction, with tonnage restricted to a 43% engine, as between Farnham and Sherbrooke, and between Montreal and Farnham local cars for St. Johns, Farnham and Foster may be handled in addition to tonnage for this class of an engine as handled between Farnham and Sherbrooke.
>
> It is further understood that in entering into this arrangement a precedent is not being established which might be quoted in future negotiations in connection with a similar condition which may exist on Eastern Lines.
>
> The above arrangement is effective December 1st, 1926, and may be cancelled by either parties to the arrangements giving thirty days notice.

Pursuant to the last paragraph of that agreement, the Company on January 12th, 1965, served notice of its desire to terminate said agreement. Following termination of said agreement, through freight crews at Farnham and Montreal submitted claims for run around payment under the provisions of article 13, account crews assigned to trains 913 and 914 ran through Farnham. The Company declined payment of these claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. I. HARRIS	**(SGD.) A. M. HAND**
GENERAL CHAIRMAN	**GENERAL MANAGER – ATLANTIC REGION**

There appeared on behalf of the Company:

F. G. Firmin	– Supervisor, Personnel & Labour Relations, Montreal
W. R. Burroughs	– Superintendent Farnham Division,

And on behalf of the Brotherhood:

J. I. Harris	– General Chairman, Montreal
H. L. O'Neill	– General Secretary,

AWARD OF THE ARBITRATOR

As indicated in the Joint Statement of Facts, since 1926 the employees concerned in this dispute have been operating as assigned crews in through freight service between Montreal and Megantic, passing through Farnham and Sherbrooke enroute. Before that time Farnham had been considered a terminal point and article 14 (a) had been applied: It reads:

> Through freight crews will be run first-in, first-out of terminals on their respective subdivisions, except as otherwise provided in paragraph (b) of this article.

In other words, operating from a pool, other crews took over. The delay thus involved caused the General Superintendent at that time to deplore the loss in business resulting in shipments between Montreal and Sherbrooke, because of the necessity then existing to put cars with such assignments on the Farnham "turn-around" and to "make" up another train out of Farnham. He appealed to the Brotherhood officials to permit what he considered was required, sanction to do away with the pool arrangement at Farnham and to permit assigned crews to operate from Montreal through to Sherbrooke

The requested change was put into effect, with this qualification:

> It is further agreed that this train will run single in each direction, with tonnage restricted to a 43% engine as between Farnham and Sherbrooke …

As stated, this practice continued until January 12, 1965, when the General Manager, Mr. G.E. Benoit, seeking to be relieved of the restriction concerning a 43% engine, said in a letter to Mr. Harris:

> There is absolutely no justification for continuance of the tonnage restriction in the operation of trains 913 and 914 under present day diesel operation. As a consequence, notice is served herewith to cancel the above mentioned agreement to remove this restriction. …

The original agreement made in 1926 contained this provision:

> The above arrangement is effective December 1, 1926, and may be cancelled by either parties to the arrangement giving thirty days' notice.

The Brotherhood's reply that they would modify the tonnage restriction to the extent of permitting two diesel engines was flatly rejected. The Company's cancellation, Mr. Harris contended, therefore required a return to the former practice of recognizing Farnham as a terminal that required a first-in, first-out arrangement.

For the Company Mr. Firmin argued, in effect, there was actually no necessity for the agreement of 1926, nor for the practice that previously existed at Farnham. He suggested that the weakness in Mr. Harris' argument that article 14(a) was of governing importance is that it failed to take into consideration the qualification to that provision contained in section (c) thereof. It reads:

> Points on current time table where one or more trains end are terminal points for such trains. The meaning of 'terminal' in the foregoing is understood to be the regular points between which crews regularly run.

As this Arbitrator held in **Case No. 11**, it is a well recognized rule in such proceedings that where either or both parties improperly interpret a provision in an agreement to their own detriment, a return to the proper course must be made once that becomes apparent.

Applying the qualification in section (c) to the circumstances outlined, it is apparent that "Montreal" and "Megantic" are "the points on current time table where one or more trains end" and are terminal points for such trains, not Farnham or Sherbrooke. The term "terminal" used in 14(a), therefore must be interpreted subject to the restricted application designed in Section (c). Thus, by such application, Farnham would be excluded as a terminal contemplated in 14(a).

Mr. Firmin further emphasized that by article 11, under the heading "Freight Service", in its Section K(6) there is an indication that the parties intended to distinguish "assigned freight service" from other types of services, by its provision as to "Road Time and Road Miles" reading:

This does not affect assigned mixed or freight service running to an intermediate point between terminals, and such assigned runs may be paid time or mileage in each direction with the usual 100 miles minimum unless the assignment is definitely for turn-around service.

For these reasons I find nothing in article 14(a) requiring a change in the practice now existing of assigning crews between the terminal points of Montreal and Megantic.

Dated at Brampton, Ontario, this 23rd day of March, 1966

(signed) J. A. HANRAHAN
ARBITRATOR